

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 186

This advisory opinion is in response to a request for the Ethics Commission [Commission] to advise a City employee whether she properly accepted a gift of used building materials from the owner of a building being demolished.

The Commission affirms a prior informal opinion on this subject. Generally, the Commission believes the employee's acceptance of reusable building materials was proper and did not violate Section 11-102.2, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH], relating to gifts.

The Commission understands the facts to be as follows:

Since (date), a business that develops real estate [the developer] has obtained building permits from the City's executive branch and has begun demolishing extant structures on a parcel of land, Parcel ABC.

During (month), the employee and other owners of land near the demolition site accepted a gift of reusable wood, primarily eight-foot long 2 x 4 boards and paneling, from demolition in preparation for new construction. Absent a gift of such boards and paneling, buyers would pay approximately (X dollars) for the boards and paneling.

After demolition and the gifts of wood, the developer began new construction. Alleged violations of the City's code provisions became numerous. As new construction progressed, the employee and other owners of property near the building site came to believe that the developer was building in violation of codes and City regulations.

The employee has participated in official City action by advising her supervisor, the director of Department X concerning the developer's construction. The director of Department X has brought the construction to the attention of the Building Department and the Department of Land Utilization.

The director and Department X where the employee works does not have jurisdiction over the issuance of building permits or approvals. The developer has not had an application or other matter before Department X, and as an employee of Department X, the employee has not taken any official City action directly and favorably affecting the

developer.

The employee's acceptance of the gift of reusable wood, whatever the cost to a buyer, does not create a conflict of interest or violate the City's standards of conduct because 1) Department X does not have jurisdiction over violations of the building code; 2) the developer has not had an application or other matter before Department X concerning which the developer may have sought to influence the employee; and 3) as an employee of Department X, the employee has not taken official action directly and favorably affecting the developer. Therefore, no actual conflict of interest exists, and no apparent conflict should have arisen.

The Commission does wish to advise the employee, however, that the appearance of a conflict of interest may at times arise under Section 11-101, RCH, whenever City officers or employees accept gifts from parties whom the public may believe are affected by the official actions of the officers or employees. In this instance, members of the media and the public may believe that the developer is or has been affected favorably by the employee's official actions in Department X. Although the facts do not support such a conclusion, in the future the employee may wish to consider whether or not to accept gifts in light of possible public perceptions and the appearance of conflicts of interest under Section 11-101, RCH.

Dated: July 25, 1988

JANE B. FELLMETH
Chair, Ethics Commission